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Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., September 24, 2012 (Issue 2012/13)

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NLRC Chairman issues Memorandum setting guidelines for withdrawal and re-filing of the same complaint

When a complaint is filed in the NLRC, the case is electronically raffled to one of some 70 Labor Arbiters. It has been observed that some complainants and their counsels have managed to have their complaints dismissed by not appearing at the mandatory conferences or withdrawing their complaints.

The NLRC Chairman has thus issued two memoranda, one on 31 August 2012 entitled "Re-filing of Complaints" and on 3 September 2012 entitled "Withdrawal and Re-Filing of Complaints". The two memoranda basically addresses the issue of re-filing the same complaint. If a complaint is dismissed by the non-appearance of the complainant or his counsel at the mandatory conferences or if the complaint is withdrawn, a second complaint that is filed which involves the same complainants and respondents must be assigned to the original Labor Arbiter to which it was originally raffled. One of the reasons cited by the NLRC Chairman is that this practice of filing 2 or 3 more complaints is being utilized by unscrupulous individuals to undermine the Electronic-raffling (E-raffling) of cases.

The Labor Arbiter to which the original complaint was raffled is also prohibited from inhibiting himself from the second complaint without the approval of the Executive Labor Arbiter.

The author hopes that these memoranda will stop the practice of re-filing the same complaint by the same seafarer against the same respondent for the 2nd or 3rd time.

Supreme Court grants disability compensation as seafarer declared fit to work on 249th day; this highlights the importance of 240th day rule

Seaman was diagnosed to have stones in his kidneys but was still able to continue working. He was then repatriated on 19 November 2002 and was referred to the company designated doctor for examination and medical treatment. On July 25, 2003, he was declared fit to work despite a showing that there were stones about 0.4 cm in size found in both of his kidneys, and there was the possibility of hematoma. Respondent proceeded to seek re-employment with the company. However, he was not re-employed. Thinking that the reason for his non re-employment was because of his medical condition, seaman sought the medical opinion of another physician who assessed him with a grade 7 disability. He then filed a complaint for disability benefits, sickness wages, damages, and attorney's fees.

The Labor Arbiter dismissed the complaint as seaman was a contractual employee and the company was under no obligation to rehire him. The seaman was also declared fit to work by the company-designated physician and such finding is more accurate than opinion of his personal doctor. The NLRC affirmed the decision of the Labor Arbiter.

The Court of Appeals granted full disability benefits to the seaman since he was unable to perform his customary work as an oiler on board an ocean-going vessel for more than 120 days.

The Supreme Court affirmed the Court of Appeals' ruling using a different reasoning.

The Court said that while the Court of Appeals held that respondent's disability was permanent and total since he was unable to perform his job for more than 120 days, the Court also clarified that temporary total disability period may be extended up to a maximum of 240 days as cited in Vergara v Hammonia Maritime Services, Inc. and Magsaysay v. Lobusta.

In this case, the seaman was repatriated on 18 November 2002 and he submitted himself to the care and treatment of the company-designated physician. *When the company-designated physician made a declaration of fitness to work on July 25, 2003, 249 days had already lapsed from the time he was repatriated. As such, his temporary total disability should be deemed total and permanent, pursuant to Article 192 (c) (1) of the Labor Code and its implementing rule.*

Moreover the Court said that even the company-designated physician's certification that respondent was already fit to work does not make him ineligible to receive permanent total disability benefits. The fact remains that respondent was unable to work for more than 240 days as he was only certified fit to work on 25 July 2003. Hence, his disability is considered permanent and total, and the fact that he was declared fit to work by the company-designated physician does not matter.

Furthermore, on the contention that the opinion of respondent's doctor of choice should not prevail over of the company-designated physician, the Court deemed the issue irrelevant as respondent's entitlement to disability benefits had been decided on the bases of law and contract, and not on the medical findings of either doctor.

Author's Note: *This case dates back to 2002 when the 120/240 day issues were still not an issue in seafarers' claims. Thus, the 120/240 day issues were not yet considered in the handling of claims. This decision highlights the importance of the 240 day issue.*

PhilAsia Shipping Agency Corporation, et al. vs. Andres Tomacruz; G.R. No. 181180; First Division, August 15, 2012; Associate Justice Teresita Leonardo-De Castro, Ponente (Attys. Martin Luke Abragan and Herbert Tria of Del Rosario & Del Rosario handled the vessel interests).

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